2023:DHC:4742

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th July, 2023

\+ CRL.REV.P. 30/2023, CRL.M.A. 665/2023 (Stay), CRL.M.A. 1509/2023 & CRL.M.A. 3966/2023

ANKUR ABBOT ..... Petitioner

Through: Mr. Viraj R. Datar, Senior Advocate with Mr. Kapil Madan, Mr. Gurmukh Singh Arora, Mr. Saurabh Joon, Mr. Manas Sharma, Mr. Sahil Madaan and Mr. Aman Garg, Advocates.

versus

EKTA ABBOT ..... Respondent

Through: Mr. Rajiv Bajaj, Mr. Karan Prakash and Ms. Shruti Khosla, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present revision petition under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeks setting aside of the order dated 23.12.2022 passed by the learned Additional Sessions Judge-02, West, Tis Hazari Courts, Delhi, in Criminal Appeal bearing No. 302/2022, whereby the appeal preferred by the present petitioner was dismissed and the order dated 28.10.2022, passed by the learned Metropolitan Magistrate, Mahila Court -05, West, Tis Hazari Courts, Delhi, was upheld.

BACKGROUND

2. On 31.03.2022, the learned Metropolitan Magistrate, Mahila Court-05, West District, Tis Hazari Courts, in an application under Section 23 of Protection of Women from Domestic Violence Act, 2005 ('DV Act') bearing number MC No. 79/2017, titled 'Ekta Abbot Vs. Ankur Abbot' directed the present petitioner to pay a sum of Rs. 1,15,000/- per month to the respondent herein and their minor daughter from the date of filing of the petition under Section 12 of the DV Act till its final disposal. The said order was challenged by the petitioner *vide* Criminal Appeal No. 114/2022, before the learned Sessions Court, Tis Hazari Courts, Delhi.

2.1 The respondent herein filed an execution petition being Ex. Crl. No. 115/2022 before the learned Metropolitan Magistrate, Mahila Court-05, West, Tis Hazari Courts, Delhi.

2.2 On 22.10.2022, the present petitioner in the aforesaid Ex. Crl. No. 115/2022, moved an application seeking exemption on his behalf from appearing before the Court, wherein it was stated that he has been suffering from Bipolar Affective Disorder ('BPAD'), Generalized Anxiety Disorder ('GAD'), depression and anxiety; and has been under regular medical supervision by the concerned doctors. Further, during the course of arguments, attention of the learned Court was drawn to Sections 105 and 116 of the Mental Healthcare Act, 2017. The learned Metropolitan Magistrate *vide* order dated 28.10.2022, issued warrants of arrest against the present petitioner.

2.3 The aforesaid order dated 28.10.2022 was challenged by the present petitioner *vide* Criminal Appeal No. 302/2022, titled 'Ankur Abbot vs. Ekta Abbot' before the learned Additional Sessions Judge, whereby, the aforesaid appeal was dismissed *vide* order dated 23.12.2022.

2.4 Aggrieved by the orders passed by the learned Additional Sessions Judge and the learned Metropolitan Magistrate, petitioner has preferred the present revision petition.

SUBMISSIONS ON BEHALF OF PETITIONER

3. Learned Senior Counsel appearing on behalf of petitioner drew the attention of this Court to Section 105 of the Mental Healthcare Act, 2017 (hereinafter referred as 'the said Act'), which provides as under:

> "**105. Question of mental illness in judicial process.-** If during any judicial process before any competent Court, proof of mental illness is produced and is challenged by the other party, the Court shall refer the same for further scrutiny to the concerned Board and the Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts, submit its opinion to the Court."

4. It was further submitted that petitioner is suffering from Bipolar Affective Disorder, which comes under the ambit of Section 2(s) of the Mental Healthcare Act, 2017, which provides as under:

> ""mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub-normality of intelligence;"

5. Learned Senior Counsel appearing on behalf of petitioner submitted that the impugned order dated 23.12.2022, passed by the learned Additional Sessions Judge ignores the medical reports of certified psychiatrist and other doctors from the year 2013, i.e., even before the dispute arose between the parties. It was submitted that the learned Additional Sessions Judge while ignoring the aforesaid documents passed the order on the basis of a single medical document issued by Dr. Renuka Chhabra (Family Physician and Gynaecologist) which was annexed with the application seeking exemption before the learned Metropolitan Magistrate on 28.10.2022, wherein it was stated that the petitioner is suffering from acute gastroenteritis with repeated vomiting, diarrhea, weakness and anxiety. It was further contended that the fact of petitioner suffering from Bipolar Affective Disorder has not been disputed by respondent which is recorded in order dated 28.10.2022, passed by the learned Metropolitan Magistrate. Similarly, it was contended that in FIR No. 54/2017, dated 23.01.2017, registered at P.S. Patel Nagar, at the instance of respondent, it has been recorded that petitioner has been suffering from mental illness/depression and was on medication for the same. It was contended that respondent has admitted that the said fact was conveyed to her even before the marriage.

6. It was further contended that, as per Section 105 of the said Act, if any party produces the documents in regard to mental illness and the other party challenges the same, then as per the aforesaid provision, the concerned Court is bound to refer the issue to the concerned medical Board and thereafter the Board itself or through a committee of experts, shall render its opinion to the concerned Court. Reliance has been placed upon a judgment of the Hon'ble

Division Bench of this Court in **'Bhavya Nain v. High Court of Delhi' 2020 SCC OnLine Del 2525** (paragraph nos. 12, 38, 41 and 42), to show that Bipolar Affective Disorder is covered under Section 2(s) of the said Act.

SUBMISSIONS ON BEHALF OF RESPONDENT

7. Learned counsel appearing on behalf of respondent submitted that the marriage between petitioner and respondent was solemnised on 07.11.2011 as per Hindu rites and ceremonies and a daughter was born out of the said wedlock. It was stated that the daughter of the couple is suffering from social communication disorder, Dyslexia, Dyscalculia and Dysgraphia. It was submitted that petitioner had filed an income affidavit on 25.03.2022, before the learned Metropolitan Magistrate in terms of '**Rajnesh vs. Neha, (2021) 2 SCC 324**', in which he had stated that he does not suffer from any disease or illness. It was contended that *vide* order dated 31.03.2022, the petitioner was directed to pay a sum of Rs. 1,15,000/- in total to both respondent and their daughter which was challenged by both petitioner and respondent in Criminal Appeal No. 114/2022 and Criminal Appeal No. 94/2022, respectively. It was pointed out that in petitioner's appeal bearing Criminal Appeal No. 114/2022, no objection of mental illness was taken. It was further submitted that respondent filed an execution petition on 22.04.2022 bearing Ex. Crl. No. 115/2022, wherein the statement with regard to petitioner suffering from mental illness was taken for the first time before the learned Execution Court on 28.09.2022.

8. Learned counsel appearing on behalf of respondent submitted that the reports annexed by the present petitioner were brought before the learned Metropolitan Magistrate, after more than eight years and even the said reports

itself state that the assessment is not conclusive in nature. It was argued on behalf of respondent that the production/procurement of certificates by petitioner cannot be used to defeat or frustrate the legal right of respondent and their minor daughter.

9. Learned counsel appearing on behalf of respondent submitted that, as pointed hereinabove, petitioner was appearing before every case/proceeding except the execution proceedings and was swearing affidavit before the Court of law, which in itself demonstrates that the present plea taken by him is malafide. It was contended that the malifide of petitioner is further evident from the fact that in the first income affidavit filed in 2017, he declared himself as a proprietor of 'Hakim Hari Kishan Lal Shafakhana'. However, in the second income affidavit in terms of **Rajnesh v. Neha (*supra*)**, he had claimed to have transferred the same to his father in the year 2016. On the basis of the aforesaid fact, it was contended that the present plea is being used to defeat and frustrate legal right of respondent and their minor daughter.

10. Learned counsel appearing on behalf of respondent placed reliance upon a judgment of the Hon'ble Supreme Court in **'S. Vanita v. Deputy Commissioner', 2022 SCC OnLine SC 1023 (paragraph-35)** and a judgment of the Hon'ble Divsion Bench of this Court in **W.P. (CRL) 3317/2017, titled 'Ravinder v. Govt. of NCT of Delhi & Ors., dated 26.04.2018**, particularly paragraph nos. 39, 120, 129.5, 130 to 131.2 and 146.

11. It was contended on behalf of respondent that harmonious interpretation between the provisions of Protection of Women from Domestic Violence Act, 2005 and Mental Healthcare Act, 2017 have to be adopted in the present case.

12. It was pointed out that even in the judgment relied upon by petitioner in **Bhavya Nain v. High Court of Delhi (*supra*),** it has been observed by the learned Division Bench of this Court in paragraph no. 53 that a person suffering from disability covered under Mental Healthcare Act, 2017 can sit in the Delhi Judicial Service Examination for earning his livelihood.

ISSUE

13. Although, no formal application was moved by petitioner under Section 105 of the said Act, but a perusal of the orders dated 28.10.2022 and 23.12.2022 passed by the learned Metropolitan Magistrate and learned Additional Sessions Judge, respectively, reflects that both the aforesaid Courts had declined to exercise its jurisdiction under Section 105 of the said Act with respect to warrants of arrest against petitioner. In view thereof, the issue before this Court is whether the powers under Section 105 of the said Act, should have been exercised and not with respect to consequences on the merits of the case before the learned Execution Court, in case, the petitioner is diagnosed with suffering from mental illness as provided under Section 2(s) of the Act.

ANALYSIS

14. The Mental Healthcare Act of 2017, was brought by way of a new legislation by repealing the Mental Health Act of 1987. The relevant provisions of the said Act for the purpose of the present petition are as under:

CHAPTER I- PRELIMINARY

Section 2(s):

> "mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary

demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub-normality of intelligence;"

CHAPTER II- MENTAL ILLNESS AND CAPACITY TO MAKE MENTAL HEALTHCARE AND TREATMENT DECISION.

Section 3:

"**3. Determination of mental illness.-** (1) Mental illness shall be determined in accordance with such nationally or internationally accepted medical standards (including the latest edition of the International Classification of Disease of the World Health Organisation) as may be notified by the Central Government.

(2) No person or authority shall classify a person as a person with mental illness, except for purposes directly relating to the treatment of the mental illness or in other matters as covered under this Act or any other law for the time being in force.

(3) Mental illness of a person shall not be determined on the basis of,—

(a) political, economic or social status or membership of a cultural, racial or religious group, or for any other reason not directly relevant to mental health status of the person;

(b) non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community.

(4) Past treatment or hospitalisation in a mental health establishment though relevant, shall not by itself justify any present or future determination of the person's mental illness.

(5) The determination of a person's mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court."

(emphasis supplied)

CHAPTER XIII- RESPONSIBILITIES OF OTHER AGENCIES.

Section 105:

> "**105. Question of mental illness in judicial process.-** If during any judicial process before any competent Court, proof of mental illness is produced and is challenged by the other party, **the Court shall refer the same for further scrutiny to the concerned Board** and Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts, submits its opinion to the Court."
>
> (emphasis supplied)

Chapter XVI- MISCELLANEOUS

Section 120:

> **"120. Act to have overriding effect.-The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law** for the time being in force or in any instrument having effect by virtue of any law other than this Act."
>
> (emphasis supplied)

15. Hon'ble Supreme Court in **Ravinder Kumar Dhariwal and Another v. Union of India**, **(2023) 2 SCC 209**, while dealing with the Indian legal framework regarding issue with mental illness has observed as under:

> "**C.2.1. The Indian Legal Framework**
>
> **60**. The National Mental Health Survey of India 2015-2016 (Prevalence, Pattern and Outcomes), was a study undertaken by the Ministry of Health and Family Welfare, Government of India in collaboration with the National Institute of Mental Health and Neuro Sciences, Bengaluru. The survey estimated that nearly 150 million individuals in India suffer from one or more mental illnesses. The Indian Lunacy Act, 1912 was enacted to provide treatment and care for lunatic persons. Section 3(5) defined a "lunatic" as an idiot or a person of unsound mind. The Act dealt with the treatment of lunatics in asylums, and the procedure for the "treatment" of such persons. The Act proceeded on the premise that "lunatics" are dangerous for the well-being of society and the fellow humans who inhabit the planet. Section 13 of the Act provided wide powers to the police officers to arrest persons whom they have reason to believe to be "lunatics".

61. The Mental Health Act, 1987 ("the 1987 Act") was enacted, as the Preamble states, "to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs". This Act replaced the Indian Lunacy Act. The 1987 Act was a huge transformative leap from the Lunacy Act which did not confer any right to live a life of dignity to mentally ill persons. However, even the 1987 Act did not confer any agency or personhood to mentally ill persons. The Act did not provide a rights-based framework for mental disability but was rather restricted to only establishing psychiatric hospitals and psychiatric nursing homes, and administrative exigencies of such establishments. Under the Act, the "mentally ill person" was defined as a person "who is in need of treatment by reason of any mental disorder other than mental retardation".

62. The Mental Healthcare Act, 2017 ("the 2017 Act") was enacted by Parliament in pursuance of India's obligations under CRPD, repealing the 1987 Act. Section 2(1)(s) of the 2017 Act defines "mental illness" as follows:

> "2. (1)(s) "mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence;"

63. Section 2(1)(o) of the Act defines "mental healthcare" to include both the diagnosis of the mental health condition of persons and rehabilitation for such persons with mental illness:

> "2. (1)(o) "mental healthcare" includes analysis and diagnosis of a person's mental condition and treatment as well as care and rehabilitation of such person for his mental illness or suspected mental illness;"

xxx xxx xxx

65. The 2017 Act provides a rights-based framework of mental healthcare and has a truly transformative potential. In stark difference from the provisions of the 1985 Act, the provisions of the 2017 Act recognise the legal capacity of persons suffering from mental illness to make decisions and choices on treatment, admission, and

personal assistance. Section 2(1)(o) includes within the definition of mental healthcare — diagnosis, treatment, and rehabilitation. Section 4 of the Act states that every person with mental illness shall be "deemed" to have the capacity to make decisions regarding their mental healthcare and treatment if they are able to understand the relevant information, and the reasonably foreseeable consequence of their decision. Sub-section (3) of Section 4 states that merely because the decision by the person is perceived inappropriate or wrong by "others", it shall not mean that the person does not have the capacity to make decisions. The recognition of the capacity of persons living with mental illness to make informed choices is an important step towards recognising their agency. This is in pursuance of Article 12 of CRPD which shifts from a substitute decision-making model to one based on supported decision-making.

(emphasis supplied)

xxx **xxx** **xxx**

68. The Indian mental healthcare discourse has undergone a substantial and progressive change. Persons living with mental illness were considered as "lunatics" under the Indian Lunacy Act, 1912 and were criminalised and subject to harassment. There was a moderate shift in the mental health discourse with the repeal of the Lunacy Act, 1912 and the enactment of the 1987 Act. **However, the transformation in the mental health rights framework was profound when the 2017 Act was enacted since it placed a person having mental health issues within the rights framework."**

(emphasis supplied)

16. In view of the aforesaid discussion, this Court is of the opinion that the Mental Healthcare Act, 2017 is a special Act and by virtue of Section 120 of the said Act, the same has been given an overriding effect with respect to any other law for the time being in force. Further a bare reading of Section 105 of the said Act reflects that the words used in the said Section are "*the Court shall refer the same for further scrutiny*" which is mandatory in nature. Given the purpose and nature of the enactment the word 'shall' in the context of the

said Act can be construed to be mandatory. Reliance can be placed on following precedents:-

16.1. The Hon'ble Supreme Court in **Vijay Dhanuka and others v. Najima Mamtaj and others, (2014) 14 SCC 638**, has observed as under:

> "12. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:
>
> > "False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."
>
> The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

16.2. The Hon'ble Apex Court in **Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1**, has observed as under:

> **"51.** In *Khub Chand* [*Khub Chand* v. *State of Rajasthan*, AIR 1967 SC 1074] , this Court observed as under : (AIR p. 1077, para 6)
> "*6.* … The term 'shall' in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations."

16.3. The Apex Court has further observed in **May George v. Special Tahsildar and others, (2010) 13 SCC 98**:

> "23. In State of Haryana v. Raghubir Dayal [(1995) 1 SCC 133] this Court has observed as under : (SCC pp. 135-36, para 5)
>
> > "5. The use of the word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word 'shall' prima facie ought to be considered mandatory but it is the function of the court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word 'shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the word 'shall' as mandatory or as directory, accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent

> persons or general public, without very much furthering the object of the Act, the same would be construed as directory.""

16.4. The purpose of Section 105 of the said Act is only with respect to an enquiry with regard to a person alleged to have a mental illness or not. The aforesaid provision creates a statutory right in favour of any person who claims to have mental illness as provided for under Section 2(s) of the said Act. The mandatory nature of the said provision does not leave any discretion with the competent Court, in case such a claim is made during judicial process pending before it. The mandate of the Section is that, in case of such a claim, the competent Court shall refer the same to the concerned Board as provided for in the said Section. The Competent Court cannot prejudge the said claim before making appropriate directions under the said Section.

CONCLUSION

17. A perusal of the record reflects that the learned Metropolitan Magistrate *vide* order dated 28.10.2022, records as under:

> "At this stage Ld. counsel for JD has advanced the argument that as per Section 105 and 116 of Mental Health Care Act,2017, the present proceedings are liable to be adjourned on the ground that JD is a patient of mental illness and the same has been challenged by DH. However, Ld. counsel for DH fairly concedes that he has not challenged the mental illness of JD, but at the same time states that JD is liable to comply with the execution orders of the court and is liable to pay the due amount to DH, which is now to the tune of more than Rs. 70 Lacs."
>
> **xxx xxx xxx**
>
> Now coming to the documents filed by the JD. The same pertains to the year 2013-2018, 2021 to 07.10.2022. Thereafter, exemption is sought on behalf of JD on the ground that on 26.10.2022 the health of the JD has been repeatedly deteriorated and in view of the same he has been advised rest by the doctor. Medical certificate dated 26.10.2022 with respect to

the same has been filed on record which is signed by Dr. Mrs. Renuka Chhabra where her specialization is mentioned as Family Physician & Gynecologist and the said medical certificate states that JD is suffering from *'acute gastroenteritis with repeated vomiting, diarrhea, weakness and anxiety.*

On going through the complete submissions, one can see that the JD is basing the mental illness as grounds for adjournment which is not in consonance with the medical certificate filed on behalf of JD today and then again Mental Health Care Act, 2017 has been referred to by JD even though the mental illness has not been challenged by the DH.

Keeping in view all the submissions made today on behalf of JD, I am of the considered view that JD is deliberately not appearing and is trying to avoid the compliance of the interim maintenance order passed by the Ld. Predecessor of the court."

18. Similarly, impugned order dated 23.12.2022, passed by learned Additional Sessions Judge, records as under:

"10. Before going into the facts of the case, I would like to discuss certain provisions of Mental Health Care Act, 2017:

- Section 2 (s) of the Mental Health Care Act, defines mental illness and it says as under:

  "mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviors, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub-normality of intelligence;
- Section 2 (g) of the Mental Health Care Act defines who would be termed as "Clinical Psychologist"
- Section 2 (q) defines the definition of "mental health nurse".
- Section 2 (r) defines the "mental health professional".
- Section 2 (y) defines the definition of "psychiatrist"
- Section 105 of the Act reads as under:

  "If during any judicial process before any competent court, proof of mental illness is produced and is challenged by the

other party, the court shall refer the same for further scrutiny to the concerned Board and Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts, submits its opinion to the court:"

11. Coming now to the merits of the case, it is contended by Ld. Counsel for the appellant/JD that Ld. Trial Court has not looked into the provisions of the Mental Health Care Act and issued the warrant of arrest against him. As far as this contention is concerned the present court is of the opinion that it holds no merits for many reasons.

Firstly, the mental illness of the person under Mental Health Care Act has to be one as defined under section 2 (s) of the Act which can only be decided by doctor as defined under Section 2(g), 2(r) and 2 (y) of the Act. Now, we would have to see whether the document placed by the Appellant/JD shows any observation of his health condition by any doctor who is as per the aforesaid sections. **There is no document of any Doctor who is a certified psychiatrist or any Doctor having a decree in psychiatry field.** Secondly, the contention raised by the appellant/JD that a board should have been constituted by the Ld. Magistrate for the purpose of ascertaining the mental health of the appellant/JD. Section 105 of the Mental Health Care Act provides that for constitution of board by Ld. Magistrate, proof of mental illness as defined under Section 2(s) of the Act should be produced. Of course, the mental illness as per Section 2(s) has to be one as ascertained by Doctor/ Mental Health Professional/ Clinical Psychologist or Psychiatrist. As per the definition of Mental Health Care Act only. **Meaning thereby, the document given by a Doctor who is a Gynecologist or a general physician would not be significant. Apparently, there is no document which can be termed as "Proof of Mental Illness" as per the Section 105 of the Mental Health Care Act.** Appellant/ JD cannot take the benefit that other party did not challenge his mental condition and therefore, he has escaped from liability of filing proof of mental illness, as it is clear from the pleadings that though, the respondent/DH have knowledge about the medical condition of the appellant/JD but they have certainly not admitted to have him suffering from mental illness as defined under Section 2(s) of the Mental Health Care Act. In view of the aforesaid discussion, it is crystal clear that Ld. Trial Court has

> rightly ignored the Medical Papers of the appellant/JC. Further, the appeal contains income affidavit dated 04.11.2020 filed by the Appellant/JD which shows that the Appellant/JD was dealing with day to day activities of the business and was manager of two/three other companies. He has himself shown in his income affidavit that he is not suffering from any mental illness."
>
> (emphasis supplied)

19. Documents annexed with the present petition comprises of reports from various hospitals. First of such report is from Cosmos Institute of Mental Health and Behavioral Sciences ('CIMBS'), Delhi Psychiatry Centre, dated 16.09.2014. A perusal of the said report reflects that the same was given on the basis of test conducted from 20th to 23rd August, 2014, and the finding recorded in the said report is that of "*Bipolar Affective Disorder, Currently Moderate Depressive Episode*".

20. Similarly, reports from Fortis Memorial Research Institute, Gurugram, dated 29.12.2022 and 26.01.2023, reflect that the petitioner is suffering from Bipolar Affective Disorder.

21. Both the learned Metropolitan Magistrate as well as the learned Additional Sessions Judge did not take into account the aforesaid report of CIMBS, dated 16.09.2014, but rather concentrated their finding on medical certificate dated 26.10.2022, issued by Dr. Renuka Chhabra (Family Physician and Gynaecologist), with respect to his health condition of acute gastroenteritis with repeated vomiting, diarrhea, weakness and anxiety annexed with the application moved for exemption on behalf of the petitioner on 28.10.2022. Moreover, Section 105 of the said Act, does not lay down any specific requirements of a document indicating a person suffering from mental illness.

22. Section 105 of the said Act is part of Chapter XIII, which deals with the responsibilities of certain agencies including Police Officers, Magistrates, Prison Officials as well as State run Custodial Institution and further obligates those agencies to take certain steps with respect to person regarding whom they have reason to believe, is suffering from mental illness.

23. Section 105 of the said Act creates a right in favor of a person who claims to suffers from mental illness as defined under Section 2(s) of the said Act. The present petitioner claims to be suffering from Bipolar Affective Disorder, Generalized Anxiety Disorder, depression and anxiety.

24. So far as the contention of learned counsel appearing on behalf of the respondent with regard to the fact that the petitioner did not raise the issue of his mental illness to in any other prior proceedings pending before the parties cannot act as an estoppel with regard to his statutory right as provided for in the said Act.

25. It is further pertinent to note Section 3(5) of the said Act states that determination of a person's mental illness alone shall not imply or be assumed that the person is of unsound mind unless he has been declared as such by a competent Court. Thus, determination in terms of Section 105 of the said Act cannot be prejudicial to the interest of respondent.

26. In view of the above, the present petition is allowed. Orders dated 28.10.2022 and 23.12.2022 passed by learned Metropolitan Magistrate and learned Additional Sessions Judge, respectively, are set aside.

27. The petitioner will be at liberty to initiate appropriate proceedings in accordance with law.

28. With the aforesaid directions, the petition stands disposed of. Pending application(s), if any, also stand disposed of accordingly.

AMIT SHARMA
JUDGE

JULY 13, 2023*/bsr*